

DEQ OFFSHORE/COASTAL WIND ENERGY RAP WORK SESSION

DRAFT MEETING NOTES WORK SESSION MEETING – TUESDAY, AUGUST 10, 2010 DEQ PIEDMONT REGIONAL OFFICE TRAINING ROOM

9:35 a.m. to 4:40 p.m. (approximately)

Meeting Attendees

<i>RAP Members</i>	<i>Interested Public</i>	<i>DEQ Staff</i>
Guy Chapman – Dominion (alt)	Ruth Boettcher - DGIF	Carol Wampler
John Daniel – Troutman Sanders/Invenegy	Elizabeth Andrews - OAG	Jennifer Perkins
Rick Reynolds – DGIF (alternate)	Don Giecek - Invenergy	Chris Egghart
Dan Holmes - PEC	Gwynn Crichton - TNC (Alt)	Deb Miller
Roger Kirchen - DHR	Elizabeth Andrews, OAG advisor	
Larry Land – VACO		
Marina Liacouras Phillips - Kaufman and Canoles		
Nikki Rovner - TNC		
Rick Weeks - DEQ		
Chandler Smith – PBS&J		
Tom Smith – DCR		
Lyle Varnell - VIMS		
Bryan Watts – Center for Conservation Biology, William & Mary/VCU		
Ron Jefferson – Appalachian Power		
Chelsea Harnish – Chesapeake Climate Action Network		
Laura McKay – DEQ (alt)		

NOTE: The following Offshore RAP Members were absent from the meeting: Bob Bisha – Dominion (Alternate present); Ray Fernald - DGIF (Alternate present); James Golden – DEQ (alternate present); James Casey – U.S. Navy; Stephen Versen - VDACS; Tony Watkinson - VMRC; Mark Swingle – Virginia Aquarium & Marine Science Center; Larry Lombardi – City of Norfolk; Ken Jurman - DMME; Bob Matthias – Virginia Offshore Wind Coalition; Jonathan Miles – VA Center for Wind Energy at JMU; Thomas Numbers - ERM;

Opening Remarks – Carol Wampler, DEQ, RAP Leader

Goal: develop and/or refine proposed draft PBR language for consideration by Offshore RAP at August 17 meeting. No decisions will be made at today's meeting; only trying to develop better work product for full RAP to consider.

Work Session attendees discussed the historic resources and wildlife (chiefly regarding coastal avian issues and nesting sea turtles) draft provisions from previous RAP meetings. These draft provisions, with meeting notes inserted, appear below. The first section refers to historic resources, and the second to wildlife.

HISTORIC RESOURCES WORKING DRAFT & MEETING NOTES

9VAC15-40-10. Definitions.

"Disturbance zone" means the area within the site directly impacted by construction and operation of the wind energy project, and within 100 feet of the boundary of the directly impacted area.

"Historic Resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape which is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Site" means the area containing a wind energy project that is under common ownership or operating control. Electrical infrastructure and other appurtenant structures up to the interconnection point shall be considered to be within the site.

"State owned submerged lands" means lands which lie seaward of the mean low water mark in tidal waters or which have an elevation below the ordinary mean high water elevation in nontidal areas that are considered property of the Commonwealth pursuant to § 28.2-1200 of the Code of Virginia. [Note: def from VMRC Subaqueous Guidelines of 2005]

{Meeting Notes: Participants in work session agreed with this definition.}

***"Nearshore waters"** means all non tidal surface waters within the Commonwealth of Virginia and tidal waters located within three (3) nautical miles of the mean low water mark off the coast of the Commonwealth of Virginia.*

[Note: definition provided by Tony Watkinson with adjustments]

{Meeting Notes: Participants at work session agreed that "nearshore waters" is appropriate term to define. RAP member pointed out that portions of the Chesapeake Bay are more than 3 miles from the mean low water mark, and that the proposed definition may inadvertently omit these areas of the Bay, and possibly other relevant waters. DEQ staff will work with VMRC and OAG to refine this definition appropriately prior to August 17 RAP meeting.}

"VLR" means the Virginia Landmarks Register (9VAC15-40-130 A 1).

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

[“VMRC” means the Virginia Marine Resources Commission.]

{Meeting Notes: After discussion of the proposed “Architectural Survey” provision, work session participants agreed that the definition of “VMRC” should be included.}

QUESTION for DHR: *It was suggested at July 29 RAP mtg that it might be helpful to define “architectural resources” and “archaeological resources” in the PBR reg. Do you agree? If so, could you please provide these defs?* **DHR has no definition of architectural or archaeological resources and attempting to define them, even for the purposes of this regulation, would be difficult and set an awkward precedent. The exceptions to any proposed rule would make the process cumbersome. For example, (1) cemeteries are considered architectural resources until such time as archaeological investigations are conducted, then they become both architectural and archaeological resources; and (2) canal systems with locks, etc. are considered engineering resources, which fall under the architectural designation, however, if those locks have been buried by sediment, they may be assigned archaeological site numbers, but then again, maybe not. As such, DHR prefers to not define these terms and use the discretion of the proponent and their professional consultant. The real issue comes down to the type of impacts that are possible. Submerged resources, whether under ground or underwater, do not have viewshed issues.**

{Meeting Notes: Participants in the work session appeared to agree with DHR’s reasoning, as stated above. Consequently, no definition of “architectural” or “archaeological” resources will be put forward by staff at the next RAP meeting.}

9VAC15-40-40. Analysis of the beneficial and adverse impacts on natural resources.

B. Analysis of Impacts on Historic Resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall also conduct a pre-construction historic resources analysis. The analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior’s Standards for Archeology and Historic Preservation (9VAC15-40-130 A 2) in the appropriate discipline. The analysis shall include each of the following:

1. Compilation of Known Historic Resources: The applicant shall gather information on known historic resources within the disturbance zone and within five (5) miles of the disturbance zone boundary and present this information on the context map referenced in 9VAC15-40-70 B, or as an overlay to this context map, as well as in tabular format.¹
2. Architectural Survey: The applicant shall conduct a field survey of all architectural resources, including cultural landscapes, 50 years of age or older within the disturbance zone and within 1.5 miles of the disturbance zone boundary and evaluate the eligibility of any identified resource for listing in the VLR; *however, for wind energy projects located in nearshore waters, this field study shall include all architectural resources 50 years of age or older within five (5)*

¹ Areas and properties that can be demonstrated through topographic or similar analyses and simulations to have no view of the project, when constructed, can be excluded from this study.

miles of the disturbance zone boundary, but shall not extend more than 1.5 miles inland from the mean low water mark.

NOTE to DEQ staff: Do universal search to change “offshore” to “nearshore” throughout entire draft PBR. Also, check uses of term “state waters” throughout.

{Meeting Notes: Participants agreed with the foregoing revision, which includes changing the reference from “state waters” to “nearshore waters.”}

3. Archaeological Survey: The applicant shall conduct an archaeological field survey of the disturbance zone and evaluate the eligibility of any identified archaeological site for listing in the VLR; however, the requirements of this paragraph shall not apply to **any portion of the disturbance zone** located on state-owned submerged lands that are subject to {VMRC permitting pursuant to} Title 28.2 of the Code of Virginia.

~~{Note: If we deleted bracketed phrase, then we can also delete definition of VMRC.}~~

{Meeting Notes: Work session participants believed that including the bracketed phrase, “VMRC permitting pursuant to,” helps focus and clarify the authority under which these issues will be addressed outside the PBR process.}

4. Historic resources report: The applicant shall provide to the department a report presenting the findings of the studies and analyses conducted pursuant to subdivisions 1 through 3 of this subsection. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on historic resources identified in subdivisions 1, 2, and 3 of this subsection.²

{Meeting Notes: Work session participants agreed that the typographical error to subsection 4 should be corrected to refer to subsection 3. That is, the applicant’s analyses conducted pursuant to the first 3 subdivisions will be compiled and analyzed in a report, pursuant to subsection 4. }

9VAC15-40-50. Determination of likely significant impacts.

B. The department shall find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-40-40 B indicate that the proposed project is likely to diminish significantly any aspect of a historic resource’s integrity.

9VAC15-40-60. Mitigation plan.

A. If the department determines that significant adverse impacts to wildlife or historic resources or both are likely, then the applicant shall prepare a mitigation plan. The mitigation plan shall include a description of the affected wildlife or historic resources or both and the impact to be mitigated, a description of actions that will be taken to avoid the stated impact, and a plan for implementation. If the impact cannot reasonably be avoided, the plan shall include a description of actions that will be taken to minimize the stated impact, and a plan for implementation. If neither avoidance nor minimization is reasonably practicable, the plan shall include a description of other measures that may be taken to

² Visual impacts should be evaluated pursuant to DHR’s *Assessing Visual Effects on Historic Properties*.

offset the stated impact, and a plan for implementation.

C. Mitigation measures for significant adverse impacts to historic resources shall include:

1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized, to the extent practicable, through design of the wind energy project or the installation of vegetative or other screening.
2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource.
3. If any identified VLR-eligible or VLR-listed archaeological site cannot be avoided or minimized to such a degree as to avoid a significant adverse impact, significant adverse impacts of the project will be mitigated through archaeological data recovery.

{Meeting Notes: Participants in the work session reviewed existing proposed provisions (above) for 9VAC-15-40-50 and 9VAC-15-40-60. They saw no need to revise these provisions, and no revisions will be suggested by staff at the August 17 RAP meeting.}

WILDLIFE WORKING DRAFT & MEETING NOTES

CHAPTER 40

SMALL RENEWABLE ENERGY PROJECTS (WIND) PERMIT BY RULE

Draft Coastal and State Waters Avian & Other Wildlife Issues

Revisions made August 6, 2010, to DGIF "Straw Man" Provisions

Further revisions made 8/11/10 in accordance with discussions at 8/10/11 RAP Work Session

{Meeting notes from the August 10 work session appear in brackets following each relevant provision.}

Part I

Definitions and Applicability

9VAC15-40-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

~~"Adjacent contiguous beach" means TO BE REWORDED TO AVOID USE OF THIS TERM~~

{Meeting notes: Work session participants favored revision of the proposed sea turtle nesting provisions that render a definition of "adjacent contiguous beach" unnecessary. This reference will be deleted.}

"Coastal Avian Protection Zones" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system (9VAC15-40-120 B 1).

~~[Question: Can we omit this definition and rely only on the reference to the map and its location in the Analysis section?]~~

{Meeting Notes: Participants in the work section did not question the suggested definition of "Coastal Avian Protection Zones." Subsequent discussions led implicitly to the conclusion that this term should be defined in the regulation.}

~~[DELETE: "Coastal zone" means the jurisdictions of Tidewater Virginia, as follows: the counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the cities of Alexandria, Chesapeake,~~

~~Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.]~~

{Meeting Notes: In lieu of the definition of “Coastal Zone,” the areas depicted in the “Coastal Avian Protection Zones” map will be used.}

~~“Existing scientific data” means...~~

{Meeting Notes: Based on discussion at the work session, it appears that the term “existing scientific data” will not be used. Rather, participants in the work session reached conceptual agreement that, in the analysis section, the applicant may perform avian field studies or rely on the conclusions regarding likely significant adverse impacts that are reflected in the “Coastal Avian Protection Zones” map. Because this discussion also led to an apparent conceptual agreement that avian species as well as areas known to contain high concentrations of avian species will be part of the analysis, further definitions will be needed to support revised “analysis” and “determination” provisions. For more information, see redrafted provisions in the “analysis” and “determination” sections, and the related meeting notes. Listed below are the additional terms to be defined. Brian Watts and Ruth Boettcher agreed to provide the scientific information necessary for these definitions.}

“Other avian mitigation factors” means Important Bird Areas, migratory staging areas, wintering areas (?), [and possibly others?].

“Important Bird Areas” means...

“Migratory staging areas” means...

“Wintering areas” means...

Other ? ...

"T&E" or "state threatened or endangered species" or "state-listed species" means any wildlife species designated as a Virginia endangered or threatened species by DGIF pursuant to the §29.1-563-570 of the Code of Virginia and 4VAC15-20-130.

"Wildlife" means wild animals; except, however, that T&E insect species shall only be addressed as part of natural heritage resources, and shall not be considered T&E wildlife.

Part II

Permit by Rule Provisions

9VAC15-40-30. Application for permit by rule for wind energy projects.

A. The owner or operator of a small wind energy project **with a rated capacity equal to or greater than 5 megawatts** shall submit a complete application to the department, in which he satisfactorily accomplishes all of the following: . . .

2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a **certification by the governing body of the locality** or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

. . .

{Meeting Notes: In the foregoing provision, and in any other provision that references “certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances,” we need to craft a proposed provision to explain if and how this certification should be done for projects in “nearshore waters.” As discussed at previous RAP meetings, there is currently no firm legal interpretation available to us that would definitively resolve the question of who

handles siting in nearshore waters; however, we continue to be faced with the need to clarify the provision in the proposed PBR. Pursuant to discussions at the work session, Elizabeth Andrews of the OAG will draft a suggested provision that may be used in the foregoing paragraph and in any other comparable provision. DEQ staff will forward her suggestion to the RAP as soon as possible. It will be discussed by RAP members at the August 17 meeting.}

13. Prior to authorization of the project and in accordance with § 10.1-1197.6 B 13 and § 10.1-1197.6 B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-40-90. The public meeting shall be held **in the locality** or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and . . .

[Question: What is the “locality” for projects in state waters?]

{Meeting Notes: The meaning of “locality” is not only relevant regarding certification of land use compliance, but also regarding where the applicant should hold the required public meeting pursuant to the foregoing provision. Participants in the work session discussed a number of alternatives for resolving this question. Among them are: the locality where the transmission cable comes ashore; the locality closest to the project (recognizing the need to consider from what point in the project the distance to shore should be measured); the locality where project impacts are most prevalent (viewshed impacts, and possibly wildlife, although discussion revealed that wildlife impacts in this situation might not be the best indicator); the locality that would be most relevant pursuant to VMRC's protocols (if such are available in writing and appear applicable to our situation); and discussing and selecting the locality in consultation with DEQ (with notation that this suggestion does not provide the degree of certainty envisioned by the PBR model). Work session participants agreed that the statute provides for only one public meeting to be held, and DEQ has no authority to require more than one; however, all participants also agreed that the applicant should provide notice of the public meeting to all potentially-affected localities. DEQ staff was tasked with drafting a “common sense” suggestion to put before the RAP on August 17. A draft provision will be circulated prior to the meeting if at all possible. }

9VAC15-40-40. Analysis of the beneficial and adverse impacts on natural resources.

A. Analyses of wildlife. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall conduct pre-construction wildlife analyses. The analyses of wildlife shall include the following:

1. Desktop surveys and maps. The applicant shall obtain a wildlife report and map generated from DGIF's Virginia Fish and Wildlife Information Service or Wildlife Environmental Review Map Service web-based application (9VAC15-40-**120** B 3) of the following: (i) wildlife species and habitats known to occur on the site or within two (2) miles of the boundary of the site; (ii) bat hibernacula known to occur on the site or within five (5) miles of the boundary of the site; (iii) maternity and bachelor bat colonies known to occur on the site or within twelve (12) miles of the boundary of the site; *and (iv) a known or potential sea turtle nesting beach is located within one (1) mile ~~distance~~ of the disturbance zone .*

{Meeting Notes: Participants agreed with DGIF's proposal for 9VAC15-40-50 that the relevant distance concerning sea turtle nesting beaches is one mile from the disturbance zone. That same recommendation appears relevant to the foregoing provision.}

2. Breeding bird surveys. If the desktop analyses prescribed in subdivision 1 of this subsection indicate the presence of or habitat for a state-listed T&E bird species or a Tier 1 or Tier 2 bird SGCN within the disturbance zone, then the applicant shall conduct a breeding bird survey to

identify state T&E bird species and Tier 1 and Tier 2 bird SGCN occurring within the disturbance zone during the species' annual breeding season.

{Meeting Notes: Changes were accidentally inserted in the above paragraph. Participants understood that this paragraph was not up for discussion. This paragraph will continue to appear in the proposed PBR as agreed upon by the original Wind RAP and as currently open for public comment in that regulatory action.}

3. Field survey of non-avian resources. If the desktop analyses prescribed in subdivision 1 of this subsection indicate the presence of or habitat for a Tier 1 or Tier 2 vertebrate SGCN, other than a bird, within the disturbance zone, then the applicant shall conduct field surveys of suitable habitats for that species within the disturbance zone to determine the species' occurrence and relative distribution within the disturbance zone.

4. Raptor migration surveys. The applicant shall conduct one year of raptor migration surveys, in both the spring and fall seasons, to determine the relative abundance of migrant raptors moving through the general vicinity of the disturbance zone.

~~**{DELETE: 5. Desktop surveys and maps of coastal avian migration corridors. When a proposed wind energy project site will be located in part or in whole within the coastal zone of Virginia, the applicant shall obtain a desktop report and maps generated from the department's Coastal GEMS geospatial data system (9VAC15-40-120 B 1) showing essential wildlife habitats, important bird areas, and migratory songbird stopover habitat.}**~~

{Meeting Notes: Work session participants agreed to replace this provision, which appears in the currently proposed Wind PBR, with the approach set forth in the revised provisions appearing below for 9VAC15-40-40 A 5.}

5. Map and field studies for avian resources in Coastal Avian Protection Zones. The applicant shall consult the "Coastal Avian Protection Zones" map generated on the department's Coastal GEMS geospatial data system (9VAC15-40-120 B 1). When a proposed wind energy project site will be located in part or in whole within one or more Coastal Avian Protection Zones, then the applicant shall perform avian field studies, or shall stipulate to the conclusion of likely significant adverse impact, for each zone where the project is located, as follows:

{Meeting notes: Work Session participants agreed on the concept that the statute requires the applicant to perform an "analysis" of avian resources (just as it does for all other natural resources); however, participants agreed that applicants should have the option of agreeing to the conclusions set forth in connection with the Coastal Avian Protection Zones map that significant adverse impacts are likely to the avian resources listed for each zone if a wind project is constructed in that zone. Participants discussed several drafting approaches to capture these concepts. The provisions below constitute staff's latest effort to implement the RAP's concepts. Note: Bryan Watts & Ruth Boettcher will check that the relevant resources in each zone have been correctly copied from the narrative they wrote to accompany the CAPZ map. }

- a. Zone 1: Nearshore waters extending 1 – 4.83 km (0.62 – 3 mi) from Virginia’s ocean-facing shoreline, excluding the mouth of the Chesapeake Bay. The relevant avian species and other avian mitigation factors in this zone are: T&E species (migratory Piping Plovers, Wilson’s Plovers, Peregrine Falcons, Gull-billed Terns and Roseate Terns), and migrating shorebirds and migrating and wintering seabirds and waterfowl of hemispheric importance. The applicant shall either perform avian field studies regarding the actual or likely occurrence of these resources, or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zones map. . The applicant shall perform avian field studies, or utilize existing scientific data, regarding the actual or likely occurrence of T&E species (in this zone.**
- b. Zone 2: Nearshore waters that extend from Virginia’s ocean-facing shoreline out to 1 km (0.62 mi), excluding the mouth of the Chesapeake Bay. The relevant avian species and other avian mitigation factors in this zone are: T&E species (migratory and breeding Piping Plovers, Wilson’s Plovers, Peregrine Falcons, and Gull-billed Terns, migratory Roseate Terns), and migrating shorebirds and migrating and wintering seabirds and waterfowl of hemispheric importance. The applicant shall either perform avian field studies regarding the actual or likely occurrence of these resources, or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zones map. The applicant shall either perform avian field studies, or utilize existing scientific data, regarding the actual or likely**

~~occurrence of T&E species (migratory and breeding Piping Plovers, Wilson's Plovers, Peregrine Falcons, and Gull-billed Terns and migrant Roseate Terns) and of migrating shorebirds and migrating and wintering seabirds and waterfowl of hemispheric importance in this zone.~~

- c. Zone 3: Barrier island/seaside lagoon system, including a 100 m (328 ft) offshore buffer. In this the zone, the relevant avian species and other avian mitigation factors are: T&E species (breeding and migratory Piping Plovers, Wilson's Plovers, Peregrine Falcons, Gull-billed Terns and Bald Eagles, migratory Roseate Terns), and Important Bird Area of global significance. The applicant shall either perform avian field studies regarding the actual or likely occurrence of these resources, or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zones map. ~~The applicant shall either perform avian field studies, or utilize existing scientific data, regarding the actual or likely occurrence of T&E species (breeding and migrant Piping Plovers, Wilson's Plovers, Gull-billed Terns, Peregrine Falcons and Bald Eagles and migrant Roseate Terns).~~
- d. Zone 4: Southern end of the Delmarva Peninsula (mainland only), including a 10 km (6.21 mi) strip that extends from the south tip northward along the western (bayside) fringe of the peninsula. In this zone, the relevant avian species and other avian mitigation factors are: T&E species (migratory Peregrine Falcons, breeding and migratory Bald Eagles), and Important Bird Area of global significance, specifically for staging migrant landbirds. The applicant shall either perform avian field studies regarding the actual or likely

occurrence of these resources, or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zones map. The applicant shall either perform avian field studies, or utilize existing scientific data, regarding the actual or likely occurrence of T/E species (migrant Peregrine Falcons and breeding and migrant Bald Eagles), an Important Bird Area of hemispheric significance, specifically for staging migrant landbirds.

- e. Zone 5: Delmarva Peninsula, excluding zones 3 and 4. In this zone, the relevant avian species and other avian mitigation factors are: T&E species (breeding Bald Eagles) and fall migrant landbird staging areas of regional to hemispheric importance [that are likely to harbor fewer birds than Zone 4]. The applicant shall either perform avian field studies regarding the actual or likely occurrence of these resources, or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zones map. The applicant shall either perform avian field studies, or utilize existing scientific data, regarding the actual or likely occurrence of T/E species (breeding Bald Eagles) and regionally to hemispherically important fall-migrant landbird staging areas that likely harbor fewer birds than zone 4.
- f. Zone 6: Southern end and mouth of the Chesapeake Bay, including the waters off of the western shore of Northampton County. The applicant shall conduct aerial transect surveys of waterfowl and seabirds in both the fall and spring migration seasons and during the wintering season to determine the distribution, density , and relative abundance of these species within this zone throughout the non-breeding season.

g. Zone 7: Lower portions of the James, York and Rappahannock Rivers and small tributaries along the south side of the lower Potomac River. In this zone, relevant **avian species and other avian mitigation factors are: T&E species (breeding Bald Eagles and non-breeding Bald Eagle concentration areas), and regionally important area for wintering and migratory waterfowl. The applicant shall either perform avian field studies regarding the actual or likely occurrence of these resources, or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zones map. The applicant shall either perform avian field studies, or utilize existing scientific data, regarding the actual or likely occurrence of T&E species (breeding Bald Eagles and non-breeding Bald Eagle concentration areas), regionally important areas for wintering and migratory waterfowl.**

h. Zone 8: Western portions of the Chesapeake Bay. The applicant shall conduct aerial transect surveys of waterfowl and seabirds in [the fall and spring migration seasons and during the wintering season to determine the distribution, density and relative abundance of these species within this zone throughout the non-breeding season.](#)

{Meeting Notes: A participant asked what is involved in an aerial transect survey. Bryan Watts explained. Staff anticipates providing this description in guidance.}

i. Zone 9: Upper portion of the Chesapeake Bay located in Accomack County, including bayside marshes and islands on the western fringe of the Delmarva Peninsula. The applicant shall conduct aerial transect surveys of waterfowl and seabirds during [the fall and spring migration seasons and during the wintering season to determine the distribution, density and relative abundance](#)

of these species within this zone throughout the non-breeding season.

Additional relevant avian species and other avian mitigation factors in this zone
are: T&E species (breeding Bald Eagles and Peregrine Falcons and a small
non-breeding Bald Eagle concentration area in Pocomoke Sound), and
Important Bird Area of regional importance. The applicant shall either
perform avian field studies regarding the actual or likely occurrence of these
additional resources, or stipulate to the conclusion of likely significant adverse
impact to these additional resources as presented in the Coastal Avian
Protection Zones map. The applicant shall either perform avian field studies,
or utilize existing scientific data, regarding the actual or likely occurrence of
T&E species (breeding Bald Eagles and Peregrine Falcons and a small non-breeding
Bald Eagle concentration area in Pocomoke Sound), Important Bird Area of regional
importance and area of unknown significance for migrant and wintering seabirds and
waterfowl.—

- j. Zone 10: Upper reaches of the James, Rappahannock and Potomac rivers. In
this zone, the relevant avian species and other avian mitigation factors are:
T&E species (breeding Bald Eagles and Bald Eagle concentration areas of
continental importance). The applicant shall either perform avian field studies
regarding the actual or likely occurrence of these resources or stipulate to the
conclusion of likely significant adverse impact to these resources as presented in
the Coastal Avian Protection Zones map. The applicant shall either perform
avian field studies, or utilize existing scientific data, regarding the actual or

~~likely occurrence of T&E species~~ (breeding Bald Eagles and Bald Eagle concentration areas of continental importance).

- ~~k.~~ Zone 11: Lower reaches of the Mattaponi and Pamunkey tributaries. In this zone, the relevant avian species and other avian mitigation factors are: T&E species (breeding Bald Eagle nest sites), and Important Bird Area of regional importance. The applicant shall either perform avian field studies regarding the actual or likely occurrence of these resources, or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zones map. ~~The applicant shall either perform avian field studies, or utilize existing scientific data, regarding the actual or likely occurrence of T&E breeding Bald Eagle nest sites.~~
- ~~l.~~ Zone 12: Outer fringes of the lower, middle and northern peninsulas. In this zone, the relevant avian species and other avian mitigation factors are: T&E species (breeding Bald Eagle nest sites). The applicant shall either perform avian field studies regarding the actual or likely occurrence of these resources, or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zones map. ~~The applicant shall either perform avian field studies, or utilize existing scientific data, regarding the actual or likely occurrence of T&E breeding Bald Eagle nest sites.~~
- ~~m.~~ Zone 13: Interior portions of the lower, middle and northern peninsulas. The applicant shall perform ground surveys of breeding Bald Eagles to determine

distribution and abundance of Bald Eagle nests within the disturbance zone
and within .25 miles of the perimeter of the disturbance zone.

Zone 14: Back Bay and surrounding private lands. In this zone, the relevant avian species and other avian mitigation factors are: Important Bird Area of Regional Importance, and important migration and wintering areas for waterfowl. The applicant shall either perform avian field studies regarding the actual or likely occurrence of these resources, or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zones map. The applicant shall either perform avian field studies, or utilize existing scientific data, regarding the actual or likely occurrence of T&E species within this zone.

{Meeting notes: Work Session participants discussed at some length whether the CAPZ map would be a static resource, or would be updated if and as new information becomes available. The final recommendation was that the map should remain static until the regulations are revised — which will be at least every 4 years according to the Governor's executive order, or sooner if 25 people request it. Rationale: OAG pointed out two legal concerns if the map were updated without going through a reg process. First, since stipulating to the conclusions supporting the CAPZ map can be the actual trigger for mandatory mitigation in some zones, changing the map without going through a public process could constitute a denial of due process. Please note that having a database (in this case the CAPZ map) serve as a trigger for mitigation is different from having a database serve as a trigger for doing a field study, the results of which would in turn become a possible trigger for mitigation. We can continually update the database in the latter situation (as we have done for various provisions in the original proposed Wind PBR and will do for some of the CAP zones), but not in the former (i.e., instances like Zones 1, 2, 3). Second, OAG pointed out that allowing scientists from other entities to change a component of the regulatory requirements could be deemed an inappropriate/unlawful delegation of DEQ's regulatory authority. In addition to these two legal considerations, discussion indicated that the avian usage of the CAP zones (where a field study is optional) has been consistent for hundreds of years, or more. There is almost no chance of significant change in the next 4 years. In the CAP zones where the extent of scientific knowledge is limited and/or changing, we are asking for field studies, so there is no need for immediate changes to the map. Over time, it is hoped that results of applicants' field studies will contribute to a better understanding of avian resources in these zones; but these new understandings are unlikely to be rapid enough to necessitate a reg change in the next 4 years. There appeared to be agreement by participants that the CAPZ map should be a static resource housed on DEQ/CZM's Coastal GEMS. Further note: Because the data layers appearing on Coastal GEMS are supplied by other entities outside DEQ/CZM, it is better not to put the public in a position of relying on updated versions of data on this site; hard for DEQ/CZM to guarantee that latest info is on site, since they do not generate the original data; another reason that CAPZ map should be static. Meeting Note: If RAP, DEQ director, etc. adopt use of the CAPZ map, both the

~~map and related narrative will be posted on Coastal GEMS, including: narrative description of the geographic area covered by each Zone; bibliography of studies and other info supporting the underlying conclusion that wind projects in these zones would present likely significant adverse impacts to the avian resources listed for each Zone. Bryan Watts will provide these supporting scientific studies, etc. For some Zones, he can make this info available very shortly. For other Zones, it will take some time to assemble the info. He believes he can have all info to DEQ well before these provisions become final.~~

[Questions:

~~Instead of the bracketed portions of some of the avian provisions above, can we merely say, “relative abundance”? See above changes in text.~~

Do we need to add “analysis” provision for sea-turtle nesting?{Answer provided by DGIF: No, it is already included in the DGIF databases that applicants will search pursuant to 9VAC15-40-40 A 1.}
Or will nesting areas automatically be “documented” when T&E analysis is performed?]

6. Bat acoustic surveys. The applicant shall conduct bat acoustic surveys to determine the presence of and level of bat activity and use within the disturbance zone.
7. Mist-netting or harp-trapping surveys. If the applicant identifies potential for T&E bat species within the disturbance zone, the applicant shall conduct a season-appropriate mist-netting survey or harp-trapping survey or both.
8. Wildlife report. The applicant shall provide to the department a report summarizing the relevant findings of the desktop and field surveys conducted pursuant to subdivisions 1 through 7 of this subsection. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife resources identified in subdivisions 1 through 8 of this subsection.

C. Analyses of other natural resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall also conduct pre-construction analyses of the impact of the proposed project on other natural resources, which have not been addressed pursuant to subsections A or B of this section, and as are specified in subdivisions 1 and 2 of this subsection. The analyses shall include:

1. Natural heritage resources. An analysis of the impact of the project on natural heritage resources, which shall include the following:
 - a. A desktop survey of natural heritage resources within the site and within two (2) miles of the boundary of the site.
 - b. Field surveys within the disturbance zone mapping: (i) the ecological community groups as classified in accordance with DCR’s The Natural Communities of Virginia, Classification of Ecological Community Groups (9VAC15-40-120 A 4); (ii) natural heritage resources to include species and community identification, location, age, size, spatial distribution, and evidence of reproduction; (iii) caves; (iv) mines; (v) rock outcrops; (vi) cliffs; (vii) wetlands; and (viii) invasive plant species.
2. Scenic resources. An analysis of the impact of the project on scenic resources, as follows: .
...
3. Other natural resources report. The applicant shall provide to the department a report, including maps, documenting the results of the analyses conducted pursuant to subdivision 1 and 2 of this subsection. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on natural resources identified in subdivisions 1 and 2 of this subsection.

9VAC15-40-50. Determination of likely significant adverse impacts.

A. The department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in 9VAC15-40-40 A document that any of the following conditions exists:

1. Bats have been detected, or a hibernaculum exists, within the disturbance zone.
2. State-listed T&E wildlife are found to occur within the disturbance zone, **or the disturbance zone is located on or within one (1) mile of a known or potential sea turtle nesting beach.**

{Meeting Notes: Participants in the work session did not object to this sea turtle nesting trigger, as suggested by DGIF.}

3. **The department shall find that significant adverse impacts to avian resources in Coastal Avian Protection Zones are likely whenever the applicant's field studies or stipulations pursuant to 9VAC15-40-40 A 5 indicate that significant avian fatalities are likely.**
proposed project is located in part or in whole within one or more Coastal Avian Protection Zones and the analysis performed as prescribed in 9VAC15-40-40 A 5 documents avian species or other avian mitigation factors.

{Meeting Notes: The foregoing draft provision attempts to capture work session participants' recommendations. The "determination" provision is designed to act as a trigger for mitigation when either actual field studies or data supporting the "Coastal Avian Protection Zones" map indicate that significant adverse impacts are likely. This current draft does not attempt to define "significant"; however, some other mitigation triggers are also somewhat nonspecific on that issue.}

B. The department shall find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-40-40 B indicate that the proposed project is likely to diminish significantly any aspect of a historic resource's integrity.

9VAC15-40-60. Mitigation plan.

A. If the department determines that significant adverse impacts to wildlife or historic resources or both are likely, then the applicant shall prepare a mitigation plan. The mitigation plan shall include a description of the affected wildlife or historic resources or both and the impact to be mitigated, a description of actions that will be taken to avoid the stated impact, and a plan for implementation. If the impact cannot reasonably be avoided, the plan shall include a description of actions that will be taken to minimize the stated impact, and a plan for implementation. If neither avoidance nor minimization is reasonably practicable, the plan shall include a description of other measures that may be taken to offset the stated impact, and a plan for implementation.

B. Mitigation measures for significant adverse impacts to wildlife shall include:

1. For state listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts, or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided, and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts to resources analyzed pursuant to 9VAC15-40-40 A or 9VAC15-40-40 C 1.

2. For proposed projects where the disturbance zone is located on or within one (1) mile of a known or potential sea turtle nesting beach, the applicant shall take all reasonable measures to avoid significant adverse impacts, or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided, and why additional proposed actions are reasonable. Mitigation measures shall include the following:

- a. **Avoiding construction within likely sea turtle crawl or nesting habitats during the turtle nesting and hatching season (May 20 – October 31). If avoiding construction during this period is not possible, then conducting daily crawl surveys of the disturbance zone (May 20 – August 31) and one (1) mile beyond the northern and southern reaches of the**

disturbance zone between sunrise and 9:00 a.m. by qualified individuals who have the ability to distinguish accurately between nesting and non-nesting emergencies.

{Meeting Notes: Work session participants reviewed criteria that helped distinguish between regulatory and guidance provisions. As agreed on by the original Wind RAP, regulatory provisions can and should be enforced by DEQ. By contrast, Guidance provisions tend to provide “how to” achieve the regulatory requirements. Information in guidance is often advisory rather than mandatory. It is often subject to continuing change; guidance can be updated as needed without going through a formal regulatory process. DGIF staff emphasized that the dates in subparagraph 2(a) are firm and can be the basis of enforcement; therefore, they are recommended for the reg itself. At the July 29 RAP meeting, RAP members agreed that the mitigation steps for nesting sea turtles, as set forth in the DGIF “straw man,” should appear in the proposed reg, and that is what the provision above does.}

- b. If construction is scheduled during the nesting season, then including measures to protect nests and hatchlings found within the [crawl] survey zone.**
- c. Minimizing nighttime construction during the nesting season, and designing project lighting during the construction and operational phases to minimize impacts on nesting sea turtles and hatchlings.**
- d. Notifying DEQ, DGIF and the Virginia Aquarium and Marine Science Center’s Sea Turtle Stranding Response Program at least twenty-four (24) hours prior to delivery of construction materials or equipment to the site from the ocean via barges, landing crafts or other large vessels.**

[Question: How would DEQ enforce part d?] * I think we should put this in guidance-where we can provide specific contact info, etc.***

{Meeting Notes: Work session participants agreed that the notification requirement should appear in the draft regulation. They suggested adding DEQ to the notification list and requiring that notice be provided at least 24 hours in advance. Specific contact information will be provided in guidance.}

- 3. For avian resources within any of the Coastal Avian Protection Zones that are referenced in 9VAC15-40-40 A 5, the applicant shall take all reasonable measures to avoid significant adverse impacts, or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided, and why additional proposed mitigation actions are reasonable.**

DM Note - Check on “proposed actions” to add “mitigation”....(check reg)

{Meeting Notes: Work session participants suggested substituting an appropriate phrase for the word “birds,” in keeping with their previous recommendation that analysis, determination, and mitigation provisions apply to avian species and to “other avian mitigation factors” (and not just to “birds”). Participants agreed that the word “mitigation” should precede the word “actions” in the provision above, and in all analogous provisions. DEQ staff will see that this word is inserted appropriately.}

FOR GUIDANCE: *Mitigation measures may include, but are not limited to:*

- Micro-siting adjustments (adjusting turbine locations within the disturbance zone);
- Seasonal restrictions or conditions regarding land clearing, construction, or maintenance activities to protect nesting birds;
- Logistical or financial support of scientific research investigating the efficacy and cost-effectiveness of project design, construction, or operational mitigation strategies (such as curtailment on a temporal or meteorological basis to coincide with peak bird movement/migration across the disturbance zone) to reduce project impacts on birds and their essential coastal habitats;
- Contribution to a fund designated for bird habitat protection and management within the Coastal Avian Protection Zone. (to be described more fully)

{Meeting Notes: At the July 29 RAP meeting, members asked DEQ staff to draft provisions showing the above bullet points as suggested guidance rather than as possible regulatory language. Discussions at the RAP meeting reflected that precise, effective mitigation measures for avian impacts are not well known or well settled (as contrasted with those for sea turtle nesting mitigation). At the RAP's request, staff copied these points—taken from DGIF's "straw man" wildlife proposal—into this draft; however, at the RAP's request DGIF's separate bullet point concerning curtailment for avian mitigation was deleted and the content subsumed as part of another bullet point. The facilitator reiterated the RAP's decision to relegate suggested avian mitigation measures to guidance, as well as the RAP's acknowledgment that these suggestions need further development and definition. She noted at the work session that DEQ staff envisions including informal public participation in the guidance-drafting process. Based on lengthy discussions and decisions by the original Wind RAP, she would anticipate that discussion of a potential financial cap, or other defining parameters, for contributions to a research or similar fund that would constitute a means of avian mitigation would arise when guidance is formulated. DGIF and a RAP member from the scientific community suggested that, when parameters or caps are determined for contributions to mitigation funds, a tiered approach be considered. That is, a larger financial contribution would be expected if the project were located in a more sensitive Coastal Avian Protection Zone than in a less sensitive Zone. They suggested that a tiered approach might discourage development in the most sensitive zones.}

4. For bats, the mitigation plan shall include measures to curtail operation of wind turbines on low wind speed nights when bats are likely to be active within the disturbance zone, and to monitor the efficacy of these measures; however, the combined cost of mitigation and post-construction monitoring, in each year after year one (1), shall not exceed 120 hours of curtailment per year per turbine, averaged. The combined cost of mitigation shall consist of lost revenue from curtailment of wind turbines, including lost production tax credits.

5. Post-construction monitoring shall be designed to achieve the following:

- a. Estimate the level of avian and bat fatalities associated with the wind energy project, accounting for scavenger removal and searcher efficiency.
- b. Investigate the correlation of bat fatalities with project operational protocols, weather-related variables, and the effectiveness of operational adjustments to reduce impacts.

6. Post-construction wildlife mitigation and management shall include the following:

- a. Post-construction mitigation. After completing the initial one (1) year of post-construction monitoring, the owner or operator shall submit a plan consisting of his proposed monitoring and mitigation actions expected to be implemented for the remainder of the project's operating life.

b. Amendment of mitigation plan. After three (3) years of post-construction mitigation efforts, the owner or operator of the project may initiate a consultation with the department to propose amendments to the mitigation plan. The owner or operator shall submit any proposed amendments of the mitigation plan to the department. The department may approve the proposed amendments if the department determines that the proposed amendments will avoid or minimize adverse impacts to a demonstrably equal or greater extent as the mitigation measures being implemented at that time. Alternatively, the department may approve the proposed amendments to the mitigation plan if the owner or operator demonstrates that the mitigation measures being implemented at that time are not effectively avoiding or minimizing adverse impacts, and the owner's or operator's proposed amendments are preferable methods to mitigate for ongoing adverse impacts. For example, proposed amendments may include funding research or preserving habitats.

[Question: Do we need to revise 5 and/or 6 above with respect to projects in state waters?] # 5 definitely needs to be reworded or revised to reflect the difficulty of measuring mortality for in-water projects.

{Meeting Notes: Ruth Boettcher and Bryan Watts agreed to look at these provisions and recommend where procedures need to be altered to reflect constraints for projects in nearshore waters.}

C. Mitigation measures for significant adverse impacts to historic resources shall include: . . .

9VAC15-40-70. Site plan and context map requirements.

{Meeting Notes: Participants at the Work Session acknowledged that some changes to the site plan and context map requirements may be needed for nearshore projects. Ruth Boettcher had offered some suggested additions to these sections, which (hopefully) appear in track changes below. Nikki Rovner agreed to review these sections and offer draft language for the RAP's consideration on Aug. 17. Staff will circulate this draft as soon as it is available.}

A. The applicant shall submit a site plan that includes maps showing the physical features and land cover of the area within the site, both before and after construction of the proposed project. The site plan shall be submitted at a scale sufficient to show, and shall include, the following: (i) the boundaries of the site; (ii) the location, height, and dimensions of all existing and proposed wind turbines, other structures, fencing and other infrastructure, [the number and depth of underground cables and transmission lines and the level of potential electric field emissions in the water column](#); (iii) the location, grades, and dimensions of all temporary and permanent on-site and access roads and channels from the nearest county, state maintained road [or mainland, and the depth and dimensions of cable trenches](#); (iv) existing topography [or bathymetry](#); and (v) water bodies, waterways, wetlands, and drainage channels [and for proposed in-water projects navigational channels, beaches, marshes and other emergent terrestrial features](#).

B. The applicant shall submit a context map including the area encompassed by the site and within five (5) miles of the site boundary. The context map shall show state and federal resource lands and other protected areas, [coastal avian protection zones](#), historic resources, state roads, waterways, locality boundaries, forests, open spaces, and transmission and substation infrastructure.

[Question: Do we need to adjust A and/or B above for projects in state waters?] see above – from Ruth Boettcher

9VAC15-40-80. Small wind energy project design standards.

The design and installation of the small wind energy project shall incorporate any requirements of the mitigation plan that pertain to design and installation, if a mitigation plan is required pursuant to 9VAC15-40-50.

9VAC15-40-90. Public participation.

A. Before the initiation of any construction at the small wind energy project, the owner or operator shall publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation informing the public that he intends to construct and operate a project eligible for a permit by rule. No later than the date of newspaper publication of the initial notice, the owner or operator shall submit to the department a copy of this notice along with electronic copies of all documents in support of the application. The notice shall include:

1. A brief description of the proposed project and its location, including the approximate dimensions of the site, approximate number of turbines, and approximate maximum blade-tip height;
2. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the proposed project and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication and to establish a dialogue between the owner or operator and persons who may be affected by the project;
3. Announcement of a 30-day comment period in accordance with subsection D of this section, and the name, telephone number, address, and email address of the owner's or operator's representative who can be contacted by the interested persons to answer questions or to whom comments shall be sent;
4. Announcement of the date, time, and place for a public meeting held in accordance with subsection C of this section; and
5. Location where copies of the documentation to be submitted to the Department in support of the permit by rule application.

B. The owner or operator shall place a copy of the documentation in a location accessible to the public in the vicinity of the proposed project.

C. The owner or operator shall hold a public meeting not earlier than 15 days after the initial publication of the notice required in subsection A of this section and no later than seven days before the close of the 30-day comment period. The meeting shall be **held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project.** [Question: what is the "locality" for projects in state waters?] **County and/or nearest city.**

{Meeting notes: Please see notes in earlier section regarding "locality."}

D. The public shall be provided at least 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin on the date the owner or operator initially publishes the notice in the local newspaper.

E. For purposes of this chapter, the applicant and any interested party who submits written comments on the proposal to the owner's or operator's representative during the public comment period, or who signs in and provides oral comments at the public meeting, shall be deemed to have participated in the proceeding for a permit by rule under this chapter and pursuant to Section 10.1-1197.7 B of the Code of Virginia.

9VAC15-40-100. Change of ownership, project modifications, termination.

9VAC15-40-110. Fees.

9VAC15-40-120. Internet accessible resources.

This chapter refers to resources to be used. These resources are available through the internet; therefore, in order to assist the applicants, the uniform resource locator or internet address is provided for each the references listed in this section.

A. Internet available resources.

1. The Virginia Landmarks Register, Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia. Available at the following internet address: <http://www.dhr.virginia.gov/register/register.htm>.
2. Professional Qualifications Standards, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as amended and annotated (48 FR 44716-740, September 29, 1983), National Parks Service, Washington, DC. Available at the following internet address: http://www.nps.gov/history/local-law/arch_stnds_9.htm.
3. Invasive alien plant species of Virginia, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, Virginia. Available at the following internet address: http://www.dcr.virginia.gov/natural_heritage/invspinfo.shtml.
4. The Natural Communities of Virginia, Classification of Ecological Community Groups, Second Approximation, 2006, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, VA. Available at the following internet address: http://www.dcr.virginia.gov/natural_heritage/ncintro.shtml.
5. Virginia Outdoors Plan, 2007, Virginia Department of Conservation and Recreation, Richmond, Virginia. Available at the following internet address: http://www.dcr.virginia.gov/recreational_planning/vop.shtml.
6. Virginia's Comprehensive Wildlife Conservation Strategy, 2005, Virginia Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. Available at the following internet address: <http://www.bewildvirginia.org/wildlifeplan/>.

B. Internet applications.

1. **Coastal GEMS application, 2010, Virginia Department of Environmental Quality.** Available at the following internet address: <http://www.deq.virginia.gov/coastal/coastalgems.html>.

NOTE: This website is maintained by the department. Assistance and information may be obtained by contacting Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia 23219, (804) 698-4000.

{Notes: Time did not permit at the meeting to discuss this question, but staff assumes that the reference to Coastal GEMS above is sufficient to support the provisions now being considered regarding the CAPZ map & related docs. So far, it has been deemed so in the reg process for the currently-proposed Wind PBR. If any RAP member sees a problem with this reference, please advise DEQ staff.}

2. Natural Landscape Assessment, 2010, Virginia Department of Conservation and Recreation. Available at the following internet address: for detailed information on ecological cores go to http://www.dcr.virginia.gov/natural_heritage/vclnavnla.shtml and maps may be viewed at DCR's Land Conservation Data Explorer Geographic Information System website at <http://www.vaconservedlands.org/gis.aspx>.

NOTE: The website is maintained by DCR. Actual shapefiles and metadata are available for free by contacting a DCR staff person at vaconslands@dcr.virginia.gov or DCR, Division of Natural Heritage, 217 Governor Street, Richmond, Virginia 23219, (804)786-7951.

3. Fish and Wildlife Information Service or Wildlife Environmental Review Map Service, 2010, Virginia Department of Game and Inland Fisheries. Available at the following internet address: <http://www.vafwis.org/fwis/>.

NOTE: This website is maintained by DGIF and it does require registration for use. Assistance and information may be obtained by contacting DGIF, Fish and Wildlife Service, 4010 West Broad Street, Richmond, Virginia 23230, (804)367-1000.

Part III

Notification Provisions

9VAC15-40-130. Small wind energy projects less than 5 megawatts.

The owner or operator of a small wind energy project with a rated capacity equal to or less than 500 kilowatts is not required to submit any notification or certification to the department. The owner or operator of a small wind energy project with a rated capacity greater than 500 kilowatts and less than 5 megawatts shall notify the department by submitting a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances and applicable local government requirements.

{Meeting Notes: The facilitator advised Work Session participants that she has asked several RAP members over the past several months whether they wanted to suggest an adjustment to the reduced reg requirements for very small projects (aka de minimis), especially with regard to coastal/nearshore avian impacts. None of these RAP members responded as of the Work Session. She had also discussed the de minimis issue in her introductory slide presentation to the Offshore RAP, noting that this was one of the only 3 issues on which the original RAP did not reach consensus – and one that the Offshore RAP might want to address, and possibly come closer to consensus. When she asked if any Work Session participant had anything to offer on the de minimis issue, no one spoke up. She noted that it appeared the issue would not come before the RAP on August 17, since no one had seen fit to raise the issue in a timely fashion.}

{Follow-up Note: The facilitator received 3 communications from RAP members on 8/11/10 – two relating to the de minimis issue, and one relating to avian mitigation, specifically caps/parameters for financial contributions. She is pursuing possible ways for the RAP to discuss and resolve these issues in the short time remaining, and she will notify the RAP ASAP if she can schedule an additional Work Session, or similar, so that these issues can be fully vetted.}

{Meeting Notes: The facilitator thanked all Work Session participants for their constructive ideas and diligence during this long day of tedious work. Hammering out suggested reg language can be time-consuming and difficult, but the effort was necessary if the RAP is to have any chance of reaching consensus before the close of the current public comment period on the proposed Wind PBR. (Please recall the RAP's July 29 recommendation – and the director's subsequent approval of this recommendation – that the Offshore RAP's recommendations be submitted as public comments and potentially become final and effective by January as part of the currently-proposed Wind PBR.) The facilitator advised Work Session participants that the director approved submission of the Offshore RAP's recommendations as public comments only if there is general consensus on those recommendations. DEQ staff intends that all issues be discussed as fully as is necessary and appropriate. If the RAP does not reach general consensus at its August 17 meeting, then that is what we will all have to live with; we will continue to hold RAP meetings and pursue another pathway for the RAP's eventual recommendations to become amendments to the Wind PBR. DEQ has put in place all that we can to facilitate the Offshore RAP's recommendations becoming public comments, as the RAP recommended. It is now totally up to individual RAP members to decide the degree to which they want to discuss specific issues at the August 17 meeting. In some cases, RAP members may have to consider whether their individual goals on specific issues are more important to them than the goal of having the coastal/nearshore provisions become final by

January. She thanked everyone for careful consideration of the issues and urged all RAP members to be present and prepared for the August 17 meeting.}

(note - language was not changed in 9VAC15-40-140 below, enforcement section was moved from 120 to 140)

Part IV

Enforcement

9VAC15-40-140. Enforcement.

The department may enforce the provisions of this chapter and any permits by rule authorized under this chapter in accordance with §§ 10.1-1197.9, 10.1-1197.10, and 10.1-1197.11 of the Code of Virginia. In so doing, the department may:

1. Issue directives in accordance with the law;
2. Issue special orders in accordance with the law;
3. Issue emergency special orders in accordance with the law;
4. Seek injunction, mandamus or other appropriate remedy as authorized by the law;
5. Seek civil penalties under the law; or
6. Seek remedies under the law, or under other laws including the common law.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC15-40)

The Natural Communities of Virginia, Classification of Ecological Community Groups, Second Approximation, 2006, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, VA.

Virginia Outdoors Plan, 2007, Virginia Department of Conservation and Recreation, Richmond, Virginia.

Virginia's Comprehensive Wildlife Conservation Strategy, 2005, Virginia Department of Game and Inland Fisheries, Richmond, Virginia.

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

_____ (Signature of certifying official)

Name and title of certifying official:_____

Name of agency:_____

Date:_____